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IN THE CORPORATION COURT OF THE CITY OF
NEWPORT NEWS, VIRGINIA

Hon. T. J. Barham, Judge.

June, 1904.

GENERAL ELECTRIC COMPANY v. CONSUMERS' LIGHT, HEAT & ICE
COMPANY.*

SERVICE OF NOTICE *by counsel for plaintiff upheld*.—Upon a notice of motion for judgment under section 3211 of the Code, a return "W. R. P. being first duly sworn, did depose and say that on May 28, 1904, he delivered a true copy of the within notice and account to W., president of the Consumers' Light, Heat & Ice Co., a corporation, in the city of Norfolk, Virginia, in which said city said W. resides, and has his place of business, and that he is not interested in this controversy," is sufficient, notwithstanding the fact that W. R. P. is plaintiff's attorney.

Bachelor & Perkins, for the plaintiff.

Louis C. Phillips, for the defendant.

This was a notice of motion for judgment; case was heard upon a special appearance and motion to quash the return upon the ground that plaintiff's attorney, being interested in the case, was not a competent person to serve the notice. Defendant's counsel contended:

First, that personal interest in a suit will disqualify any person from serving process in that suit, and to this point cited *Andrews v. Fitzpatrick*, 89 Va. 438. In this case it was said that a sheriff, being personally interested in the suit, was disqualified from serving the process. In *Carter v. Harris*, 4 Rand. 199, it was held that personal interest in an execution would disqualify a sheriff from levying and selling under it, even though that interest were as remote as that of an assignor of the execution.

Second, that a plaintiff's attorney is interested in the suit. To this point, defendant's attorney cited *Rutherford v. Moody*, 59 Ark. 328, in which it was held that process in a suit could not be served by one interested therein "as attorney or otherwise," and also cited *Bowers v. Bowers*, 19 Gratt. 697, in which it is held that an attorney in a case, though not pecuniarily interested therein, because

* Reported by George C. Gregory.

he was acting for a firm of which he was only a nominal partner, could not execute a decree for an account as a commissioner in chancery.

The plaintiff's counsel contended that the interest which would disqualify a person from serving process was a pecuniary interest, citing 19 Am. and Eng. Encyc. Pl. and Pr., 580, where it is said: "It is a general rule of almost universal application that no one who is a party to the litigation can make a valid service of process therein;" wherein is cited also case of *Whitewater First National Bank v. Istenson*, 68 Minn. 28, in which it was held that, where the statute authorized summons to be served by a sheriff or by any person not a party to the action, plaintiff's attorney could serve the summons. Plaintiff's counsel also cited *Furst v. Banks*, 101 Va. 208, to the effect that the same formalities were not required in the service of a notice as are required for the beginning of a suit.

The court held that the plaintiff's attorney was competent to serve the notice, drawing a distinction between the judicial act performed in the case of *Bowers v. Bowers*, *supra*, and the ministerial act performed in the case at bar.